

SERVICE DATE – DECEMBER 30, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 579X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN PARKE AND VERMILLION COUNTIES, IN

Decided: December 24, 2002

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon an approximately 1.17-mile line of its railroad between milepost BD-191.41 at Montezuma and milepost BD-192.58 at Hillsdale in Parke and Vermillion Counties, IN. Notice of the exemption was served and published in the Federal Register on May 26, 2000 (65 FR 34249-50).¹ The exemption was scheduled to become effective on June 25, 2000, but a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by the Parke County Redevelopment Commission (PCRC) to purchase the entire line. This automatically stayed the effective date of the exemption for 10 days until July 5, 2000.²

On May 22, 2000, the Indiana Department of Transportation (InDOT) filed a request for a 180-day public use condition under 49 U.S.C. 10905.³ By petition filed June 7, 2000, the Indiana Trails Fund, Inc. (ITF) filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act,⁴ and for a public use condition in order to negotiate with CSXT for acquisition of the right-of-way for use as a recreational trail. By facsimile dated June 20, 2000, CSXT stated that it was willing to negotiate with ITF for interim trail use, subject to the possible filing of an OFA.

¹ In the May 26 notice, the Board stated that, if consummation had not been effected by CSXT's filing of a notice of consummation by May 26, 2001, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.

² See 49 CFR 1152.27(c)(2)(i).

³ On June 5, 2000, InDOT clarified that its request was for public use only.

⁴ Although the request was late-filed, it was accepted because there was no indication that any party would be prejudiced thereby. June 23, 2000 decision at 2 n.3.

By decision served June 23, 2000, the proceeding was reopened and the exemption was made subject to several environmental conditions. The decision also found that InDOT and ITF had met the requirements for issuance of a NITU and for imposition of a public use condition, but held both in abeyance pending completion of the OFA process.⁵ Also on June 23, 2000, PCRC timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to acquire the line pursuant to a donation by CSXT. By decision served June 28, 2000, PCRC was found to be financially responsible, and the effective date of the decision authorizing abandonment was postponed to permit the OFA process to proceed. In a decision served July 14, 2000, PCRC was authorized under 49 U.S.C. 10904 to acquire the line by donation and the exemption was dismissed, effective on the date the sale was consummated.

On March 9, 2001, PCRC and Montezuma Grain Company, LLP (MGC) filed a petition to: (1) reopen and vacate all decisions in this proceeding; and (2) reopen the decision served August 19, 1994, in a related proceeding, CSX Transportation, Inc.—Abandonment—Between Bloomington and Montezuma, in Parke County, IN, Docket No. AB-55 (Sub-No. 486), and to partially vacate the abandonment certificate issued therein. On March 9, 2001, PCRC and MGC also filed a related formal complaint against CSXT for alleged breach of its common carrier obligation. CSXT replied to the petition and filed a motion to dismiss the complaint on April 11, 2001.

On May 22, 2001, CSXT filed a request to extend the deadline to consummate the abandonment and to file its notice of consummation until 60 days after the Board had reached a final decision on the petition to reopen and the complaint. CSXT's request was granted by decision served May 29, 2001.

By decision served September 13, 2002: (1) the request to reopen and partially vacate the abandonment authority in ICC Docket No. AB-55 (Sub-No. 486) was denied; (2) the request to reopen STB Docket No. AB-55 (Sub-No. 579X) and to vacate all decisions therein was denied; (3) the motion to dismiss the complaint was granted; and (4) the parties were instructed to notify the Board whether they intended to proceed under the OFA process. PCRC and MGC informed the Board that they did not intend to proceed under the OFA process by letter filed on October 18, 2002.

On November 8, 2002, CSXT filed a second request to extend the time to consummate the abandonment and to file its notice of consummation until January 13, 2003. CSXT stated that, because the parties had decided not to proceed under the OFA process, it was requesting additional time to consummate and to contact ITF to see whether it was still interested in rail banking the line. CSXT's request was granted by decision served November 19, 2002.

⁵ The decision also indicated that, should the OFA process terminate, a decision would be issued to impose interim trail use and public use conditions.

By letter filed on December 9, 2002, CSXT notified the Board that ITF is still interested in developing a trail on the line and requested that a 180-day trail use negotiating period be imposed. CSXT also requests that the Board extend the deadline for the filing of its notice of consummation until at least 60 days after the close of the trail use negotiating period.

As indicated, in the June 23, 2000 decision, the Board concluded that ITF's trail use request complied with the requirements of 49 CFR 1152.29. Inasmuch as CSXT has not consummated the abandonment and is willing to negotiate with ITF for the right-of-way, a NITU will be issued with the trail use negotiation period running 180 days from the service date of this decision and notice (until June 28, 2002). The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). As discussed earlier, the submissions by InDOT and ITF have already been found to satisfy the requirements for a public use condition. Accordingly, a 180-day public use condition will now also be imposed, but a public use condition extends only for 180 days beyond the effective date of a decision authorizing abandonment. Here, due to the OFA possibility that ended with the PCRC and MGC letter filed on October 18, 2002, that date will be deemed to be October 18, 2002, and the public use condition will extend for a period of 180 days from that date (until April 16, 2003).

When the need for interim trail use/rail banking and public use is shown, as here, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, CSXT must keep the remaining portion of the right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CSXT is not required to deal exclusively with InDOT and ITF, but may engage in negotiations with other interested persons.

Finally, CSXT has shown good cause to extend the time to consummate the abandonment and for filing a notice of consummation in this proceeding. As such, its request for that relief will also be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption served and published in the Federal Register on May 26, 2000, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below for a period of 180 days from the service date of this decision and notice (until June 28, 2003), subject to the condition that CSXT keep intact the right-of-way underlying the tracks, including bridges, trestles, culverts and tunnels, for a period of 180 days from October 18, 2002 (until April 16, 2003), to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use.
3. If an interim trail use/rail banking agreement is executed before the 180-day period expires, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
6. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
7. If an agreement for interim trail use/rail banking is reached by June 28, 2003, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line.
8. CSXT's request for an extension of time to exercise the abandonment authority is granted. The authority to abandon must be exercised, and the notice of consummation must be filed, no later than August 27, 2003.

9. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary